THE NEED FOR EFFECTIVE FEDERAL OUTREACH AND MECHANISMS TO COORDINATE AND SUPPORT FEDERAL, STATE AND LOCAL IMPLEMENTATION OF THE CONVENTION

Response to the Seventh to Ninth Periodic Reports of the United States to the Committee on the Elimination of All Forms of Racial Discrimination

June 2014

Prepared by:
Columbia Law School Human Rights Institute &
International Association of Official Human Rights Agencies
I. Title

The Need for Effective Federal Outreach and Mechanisms to Coordinate and Support Federal, State and Local Implementation of the Convention

I. Reporting Organization(s)

Columbia Law School’s Human Rights Institute & the International Association of Official Human Rights Agencies (IAOHRA)

II. Issue Summary

As this Committee has consistently recognized, compliance with the CERD requires effective coordination between federal, state, and local governments. In ratifying the CERD, the United States indicated that state and local governments share authority to implement the treaty. This includes the over 150 state and local civil and human rights agencies that enforce federal, state and local human and civil rights laws and/or conduct research, training and education, and issue policy recommendations within the United States (“Human Rights Agencies”). It also encompasses the full array of state and local officials with decision-making and enforcement authority, including governors, state attorneys general, mayors, state legislators, city council members, law enforcement, city, county and town executives, and boards of supervisors.

While human rights transcend the jurisdictional divides of federal, state and local governments, the federal government is ultimately responsible for treaty compliance throughout and within the United States. Despite increasing recognition of the valuable role of state and local officials, the United States has taken few steps to educate local governments about international human rights obligations or support state and local efforts to implement human rights.

Within the United States, no permanent government entities are tasked to encourage, coordinate and support human rights education, monitoring or implementation at the federal, state and local levels. There is no federal clearinghouse to offer guidance or technical assistance on human rights treaties, or how these treaties, including the CERD, relate to law and policy. No focal points exist to collect and disseminate recent developments or to translate international standards into domestic practice. The United States also lacks a national human rights monitoring body, such as an NHRI.

Because there is no national human rights infrastructure, many state and local officials are unaware of the treaties the U.S. has ratified and their obligations with respect to treaty implementation. This lack of basic human rights education is compounded by resource and staffing constraints at the state and local level, which further impede the promotion and protection of human rights. State and local governments thus lack the capacity necessary to effectively collect and analyze data on human rights compliance and take other necessary steps to implement human rights.

What does currently exist at the federal level is an ad hoc approach to human rights reporting and implementation without meaningful avenues for state and local government participation. Thus, U.S. compliance with CERD will continue to fall short.
State and local governments are increasingly expressing interest in promoting and protecting human rights. A number of states and localities have explicitly incorporated international human rights standards into local law, policy and practice.5 In 2013, both the IAOHRA – the umbrella organization of Human Rights Agencies – and the U.S. Conference of Mayors, an organization representing cities of 30,000 residents or more, passed resolutions committing to promote and protect human rights locally.7 While existing efforts are promising, they, too, are ad hoc and lack the coordination and resources necessary to ensure their sustainability. A more comprehensive and coordinated approach to human rights implementation requires federal guidance and support.

While U.S. law may prevent the federal government from compelling state and local governments to comply with human rights obligations,8 it has many tools to encourage and incentivize state and local implementation.9 These include educating state and local governments about human rights and providing tangible resources and support for these efforts.

III. Concluding Observations

The 2008 review of the United States addressed numerous human rights issues that fall within state and local jurisdiction, including housing, employment, racial profiling and disparities in sentencing. In 2008, the Committee on the Elimination of Racial Discrimination called on the United States to “consider the establishment of an independent national human rights institution” and “establish appropriate mechanisms to ensure a co-ordinated approach towards the implementation of the Convention at the federal, state and local levels.”10 These recommendations were coupled with a call for increased human rights education for the public and government officials.11

IV. U.S. Government Report

In its Report, the U.S. “fully agree[d] that mechanisms designed to strengthen coordination are critical,” noting that “The United States continues to examine ways to improve human rights treaty implementation at all levels of government.”12

While laudable for recognizing the important role of state and local actors in human rights implementation,13 the U.S. Report offers an incomplete picture of the context in which they operate. It fails to acknowledge the challenges that state and local governments face in fully participating in human rights monitoring and implementation. These constraints include – and extend beyond – limited knowledge of international human rights standards to broader structural issues. Even where state and local governments have an awareness of international human rights, they have little capacity to engage in human rights work.

In recent years, the Obama Administration has taken a number of important steps to improve federal coordination around treaty reporting and implementation, including the creation of an inter-agency Equality Working Group to coordinate around human rights.14 In 2014, the State Department’s Office of the Legal Adviser sent letters to state and local governments, emphasizing the U.S. “commitment to protecting human rights domestically through the operation of our comprehensive system of laws, policies, and programs at all levels of government – federal, state, local, insular, and tribal,” and noting that the U.S. is “proud of this
shared role in upholding and protecting human rights.” Additionally, the U.S. included three state and local government representatives in its delegation for the 2014 ICCPR review.

These are positive steps, and more can be done to foster human rights monitoring and implementation at the state and local level. The Equality Working Group is a welcome development, but it has yet to be institutionalized and, to date, it has not engaged with state and local governments. Further, the State Department’s official communications with state and local governments have focused on treaty reporting, and have not provided substantive guidance on ways to foster state and local compliance with U.S. human rights commitments and obligations.

To date, the federal government has not disseminated U.N. Concluding Observations or UPR recommendations to state and local government actors, nor has it offered guidance on how they relate to state and local policy or on effective practices to bolster compliance with these recommendations. And, although the U.S.’s one-year follow-up response to the Committee in 2009 noted that the Equal Opportunity Employment Commission, Department of Homeland Security, and Department of Justice would incorporate CERD into trainings, there is no information available on whether this has actually occurred.

While offering a potential infrastructure for human rights implementation, the “complementary [federal, state and local] protections and mechanisms” discussed in the U.S. report are not oriented around international human rights treaty standards or adequately resourced to monitor or promote compliance with these standards. A more comprehensive national approach to human rights implementation will require federal mechanisms to support, incentivize and coordinate state and local efforts to comply with international human rights treaty standards through education, training and other means.

V. Legal Framework

- Articles 2; 5; 7

VI. The CERD Committee General Recommendations

General Recommendation 31 emphasizes the importance of national strategies with benchmarks and objectives to (a) foster human rights education, including among government actors and (b) eliminate structural discrimination. To ensure implementation, it further calls for an independent national entity responsible for assessing progress and identifying next steps. In the context of follow-up from the Durban Review Conference, General Recommendation 33 calls for national mechanisms to ensure that steps are taken to follow-up with Concluding Observations. These comments build upon General Recommendation 17, which recommends that parties to the Convention establish appropriate national bodies to foster education of the CERD and promote and monitor compliance nationally.

VII. Other UN Body Recommendations

Most recently, the Human Rights Committee called on the U.S. to “strengthen and expand existing mechanisms mandated to monitor the implementation of human rights…[and] provide them with adequate human and financial resources or consider establishing an independent national human rights institution.” In 2006, the Human Rights Committee called for the
creation of mechanisms to facilitate more comprehensive reviews of compliance at all levels of
government and foster follow-up with the Concluding Observations, emphasizing that action
was needed to ensure that federal and state laws comply with the treaty in a number of areas.

In its last review of the United States, the Committee on the Rights of the Child similarly voiced
concern over the lack of a national human rights institution. During the 2010 Universal
Periodic Review of the United States, a number of countries called for the U.S. to consider a
national human rights institution, improve federal coordination with state and local governments
and increase human rights education and training – recommendations the U.S. accepted.

After its 2010 U.S. Country visit, the Working Group of Experts on Peoples of African Descent
recommended that the United States create a national human rights monitoring body. The
Working Group on Business and Human Rights, too, has noted that incentives for human rights
compliance from federal, state and local authorities are needed to bolster respect for human
rights among businesses.

VIII. Recommended Questions

We respectfully recommend that the Committee ask the U.S. delegation to:

- Please describe the education, legislative, policy and other measures the United States will
take to ensure that state and local agencies and officials have the capacity to respect and
implement the United States’ commitments under the CERD and to implement the
Committee’s Concluding Observations. Specifically, how will the United States (a) effectively communicate these recommendations to state and local agencies and officials to foster greater awareness of, and compliance with, human rights standards; and (b) offer guidance and technical assistance to state and local governments on how treaties such as the CERD relate to law and policy at the state and local level.

- Please indicate (a) what measures the United States is taking to create institutionalized,
transparent and coordinated mechanisms to monitor and implement human rights at the
federal, state and local levels in the long term; and (b) how the federal government, including
the federal level Interagency Working Group on Human Rights and the Equality Working
Group, coordinate with state and local governments to support and encourage state and local
human rights implementation, including through education, training and funding.

IX. Suggested Recommendations

To ensure that state and local governments can reach their full potential to implement the CERD,
the United States must:

- Provide education and training to state and local officials on their obligations under the
CERD. This should include dissemination of Concluding Observations by federal
agencies in coordination with the State Department, within one year of the review, along
with appropriate guidance on how they relate to state and local policy and effective means of
implementation.

- Ensure dedicated staff responsible for coordinating and liaising with state and local
actors regarding human rights reporting and implementation, including identifying and
developing best practices at the state and local level and communicating recommendations from international bodies to state and local governments.

- **Provide state and local governments with funding to engage in civil and human rights implementation and compliance**, including through grants to Human Rights Agencies, to ensure they have the resources to undertake human rights education, monitoring, reporting and enforcement.

- **Establish institutionalized, transparent and effective mechanisms** to coordinate with state and local officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels, such as a reinvigorated Interagency Working Group on Human Rights and a National Human Rights Institution.

2 The U.S. ratified the CERD subject to the following understanding: “This Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.” 140 Cong. Rec. 14326 (1994).


4 As one example, in 2008, Human Rights Watch sent letters to the Attorneys General of every state to identify whether they were aware of the International Convention on the Elimination of All Forms of Racial Discrimination and their states’ responsibilities under the treaty. The responses they received were limited but illuminating. The Attorney General of Kansas, for example, responded: “It does not appear that Kansas was a party to any agreement or resolution passed by this body or the federal government” and requested a “cite to the pre-emptive federal law and/or Kansas Statute...creating a legal duty.” Human Rights Watch, *Submission to the Committee on the Elimination of All Forms of Racial Discrimination During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America CERD 72nd Session* 64 (Feb. 2008), available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/HRW.pdf.

5 See infra Section V; *Closing the Gap*, supra note 1, at 18-19.


11 Id., ¶ 36.


14 See U.S. 2013 CERD Report, supra note 12, ¶¶ 4; 30 (“the newly established Equality Working Group creates a forum for dialogue between civil society and the federal government on issues of equality and human rights”).


16 See Letter From Principal Deputy Legal Adviser McLeod, supra note 15.


24 Id., ¶¶ 22-25; 28 (referring to racial profiling, housing discrimination on the basis of race and employment discrimination on the basis of gender and sexual orientation).


27 See United States of America, Accepted UPR Recommendations, p.11, available at http://www.humanrights.gov/wp-content/uploads/2012/03/USAcceptedRecommendations-2010UPR.pdf (expressing US Support for Recommendation 65 (“Review its laws at the Federal and State levels with a view to bringing them in line with its international human rights obligations”); 74 (“That a human rights institution at the federal level be considered in order to ensure implementation of human rights in all states”); 87 (“Incorporate human rights training and education strategies in their public policies.”)).
